

# Burbank Water and Power

## MEMORANDUM

DATE: March 2, 2010

TO: Michael S. Flad, City Manager

FROM: Ron Davis, General Manager, BWP

SUBJECT: **RETROFIT UPON RESALE ORDINANCE**

### PURPOSE

To request City Council adoption of the proposed Retrofit Upon Resale Ordinance.

### BACKGROUND

On May 19, 2009, BWP staff presented a proposed Retrofit Upon Resale Ordinance to the City Council. A Retrofit Upon Resale Ordinance would require that any residential, commercial, or industrial property resold in Burbank be upgraded to current California Plumbing Code requirements for toilets, urinals, showerheads, and kitchen and bathroom faucet aerators as a condition of escrow.

The following table shows Code requirements for each proposed water-using end use along with information related to BWP and/or Metropolitan Water District (MWD) support of each element.

<b>Proposed Retrofit Upon Resale Elements</b>		
<b>Item</b>	<b>California Plumbing Code Requirement</b>	<b>Notes</b>
Toilets	Not to exceed 1.6 gallons/flush	BWP provides business cash rebates for toilets exceeding Code requirement; MWD provides residential rebates.
Urinals	Not to exceed 1.0 gallons/flush	BWP provides cash rebates for urinals exceeding Code requirement.
Showerheads	Not to exceed 2.5 gallons/minute	BWP provides 1.5 gallon/minute showerheads at no cost to customers.
Kitchen Aerators	Not exceed 2.2 gallons/minute	BWP provides 2.0 gallon/minute kitchen aerators at no cost to customers.
Bathroom Aerators	Not exceed 2.2 gallons/minute	BWP provides 1.0 gallon/minute bathroom aerators at no cost to customers.

As originally presented in May, the proposed Ordinance included a requirement that the Seller, Buyer and the Seller's real estate agent, broker or sales person certify compliance with the Ordinance by signature on the Certificate of Compliance, which would be included in the property's transfer documentation. Representatives from the Burbank Association of Realtors addressed the City Council on May 19 in opposition to the Ordinance. Specifically, the Association of Realtors did not want the Ordinance to require Realtor signature on the compliance form, stating that this requirement would place an undue hardship on agents and brokers, and increase their liability in the transaction process.

On May 19, the Council asked that BWP staff continue to work with the Burbank Association of Realtors to determine a mutually acceptable method of compliance and to return to the Council with a recommendation.

In May, BWP staff met with Darin Chase, who was the legislative representative for the Burbank Association of Realtors. We discussed the pros and cons of real estate professionals certifying compliance, as well as the pros and cons involved in asking a third party professional, such as a plumber, to certify compliance. From our discussions we agreed that real estate agent signature on the compliance form was not necessary. Any additional degree of confidence that compliance had been achieved would be outweighed by liability concerns that real estate professionals might carry as a result of this element. As such, staff is in agreement that real estate agent signature verifying compliance should not be required.

We additionally discussed the option of having compliance certified by a third party professional and recommend that this not be a requirement of the Ordinance. We believe that the additional cost for a plumber, contractor or retrofitter is unnecessary. If the Seller, who is responsible for compliance, is uncertain as to the flow rate of their plumbing equipment there are several options to gaining this information. For instance, BWP provides flow meter bags for use with showers, kitchen and bathroom faucets. This method literally takes seconds to discover the faucet flow rate. And, of course BWP provides free showerheads and aerators that exceed Code requirements. We would urge Sellers to eliminate any doubt by paying a visit to BWP for these items. In the case of toilets, they are typically stamped with the gallons per flush rate. If this information is not included, there is a greater likelihood that the toilet is not compliant. Additionally, simply determining when the equipment was last replaced can be an easy indicator of compliance. If a toilet has not been replaced since 1994, it is not in compliance. Last, toilets, urinals, showerheads and aerators can be included in the property's inspection review to gain water flow rate information.

Following our meeting with Mr. Chase where a solution for implementation of a Retrofit Upon Resale ordinance was agreed upon, staff was scheduled to resume discussion of the proposed Ordinance with the City Council on June 23. However, this date was postponed until August at the request of the Burbank Association of Realtors so that pending legislation, Senate Bill 407 (SB 407), could be reviewed.

On August 11, 2009, BWP staff returned to the City Council with an amended Retrofit upon Resale Ordinance that excluded the original requirement of having the Realtor's signature on the compliance form. (Text for the proposed Retrofit Upon Resale Ordinance is included in

Appendix A.) During this Council meeting, members of the Burbank Association of Realtors argued that the proposed requirements of SB 407, discussed below, would render a Burbank Retrofit Upon Resale Ordinance unnecessary. After much deliberation, the Council voted to note and file the current item, and asked staff to return again in six months with an update on the legislation and a recommendation for the Council.

## **ANALYSIS**

### Senate Bill 407

SB 407 was chaptered into law by Governor Schwarzenegger on October 11, 2009. As originally drafted, SB 407 would have mandated a state-wide retrofit upon resale requirement very similar to the Ordinance proposed by BWP. After meeting with the California Association of Realtors in June 2009, the bill's author agreed to change the legislation from a point-of-sale requirement to a broader edict that all properties built before January 1994 be upgraded to meet California Plumbing Code standards. The law includes three time triggers:

1. January 1, 2014: Properties seeking permits for alterations or improvements would have to upgrade plumbing fixtures to Plumbing Code standards.
2. January 1, 2017: All non-compliant residential properties would have to upgrade to Plumbing Code standards.
3. January 1, 2019: Multifamily and commercial properties would have to upgrade to Plumbing Code standards.

### SB 407 Challenges

At first glance, SB 407 seems like good water-saving legislation. However, staff has significant concerns related to this bill.

The most obvious shortfall of the bill is that it provides no water-saving measures until 2014, and then only on a limited basis. The City would have to wait a full seven years before the requirement to upgrade water-using fixtures would be mandated for single-family homes built before 1994.

The second problematic issue is how to effectively manage the citywide retrofit requirement that the bill carries. Compliance confirmation would certainly be an issue and would likely necessitate a large price tag. At the August 2009 Council meeting, one speaker from the Burbank Association of Realtors declared that the bill would be "enforced by the state." It must be stated that the bill carries with it only the obligation for the City to enact the bill's requirements, and does not provide direction or funding on how to accomplish this. That would be borne by the citizens of Burbank. Enforcing this bill will be costly and unwieldy.

In many ways, this bill is essentially a retrofit upon resale requirement that doesn't kick in until 2017. SB 407 mandates that as of January 1, 2017, a seller or transferor of single-family or multi-family residential real property, or commercial real property disclose to a purchaser or transferee, in writing, specified requirements for replacing plumbing fixtures, and whether the

real property includes noncompliant plumbing. Short of the City investing untold numbers of dollars to launch a full-scale retrofit compliance awareness and enforcement campaign, the more benign route would be to simply require Plumbing Code compliance at the time a property changes hands.

SB 407 will still be a requirement in Burbank come 2017, but if the City were to start retrofit requirements now, we will be that much further along and would have reaped significant benefits of durable water savings.

One area that SB 407 got absolutely right was the numerous declarations about the need for water efficiency and planning for water supply reliability:

*Adequate water supply reliability for all uses is essential to the future economic and environmental health of California.*

*Environmentally sound strategies to meet future water supply...are key to protecting and restoring aquatic resources in California.*

*There is a pressing need to address water supply reliability issues...*

*To address these concerns, it is the intent of the Legislature to require that residential and commercial real property built and available for use or occupancy on or before January 1, 1994, be equipped with water-conserving plumbing fixtures.*

#### Sustainable Water Use is a Necessity, Not an Option

The need for sustainable water resources is simply too great to delay activity. In its actions, the City Council has repeatedly concurred on this point. Here are some of the measures already taken by the Council in support of water reliability:

1. Sustainable Water Use Ordinance: Passed in April 2008, this tool has been at the heart of the City's significant water conservation gains to date. Burbank's Sustainable Water Use Ordinance defines water wasting habits that are no longer tolerated in the City, such as hosing down driveways, and sets appropriate limits on landscape irrigation which is the number one use of potable water in Burbank. This ordinance pertains to every household and business in Burbank.
2. Multi-Family Residential, Commercial and Industrial Plumbing Requirements: In 2009, the City Council enacted a water-saving requirement for all businesses in Burbank, including multi-family rental properties. By June 30, 2010, all businesses need to certify that the water-using devices in their buildings meet specific flow rates. The penalty should certification not take place is steep: a 25% surcharge on water costs.

This requirement effectively renders the 2019 time trigger of SB 407 obsolete in Burbank, a full decade before the legislation would have required any water-saving action by businesses.

3. Green Home House Call: This water, electricity and natural gas saving program was introduced in September 2009 and is open to every Burbank household, single- and multi-family alike. Through the Green Home House Call program, residents meet with an energy and water professional at their home. The program representative installs water-saving showerheads, kitchen and bathroom faucet aerators, energy-efficient light bulbs; reviews the irrigation system for any leaks or head misdirection; and schedules the irrigation controller to meet the City's landscape watering requirements, all at no cost to the resident. The program also provides attic insulation and duct testing and sealing for qualifying homes, again at no cost.

Should the proposed Retrofit Upon Resale Ordinance pass, residential Sellers would be encouraged to take advantage of this program to ensure compliance with three out of four of the device categories covered under the Ordinance.

4. Multi-Family Toilet Exchange Program: In November 2009, the Council approved a BWP program that will replace 1,000 old, inefficient toilets with High Efficiency Toilets using 1.28 gallons per flush in multi-family buildings. Staff is currently out to bid on this project and expects to award a contract in late March.
5. Rebates for Toilets, Urinals and Clothes Washers: Also in November 2009, Burbank's Council approved BWP funding of rebates for high-efficiency toilets, urinals and clothes washers should Metropolitan Water District funding run out.
6. Three-Tier Residential Water Rate: Implemented in July 2009, this water rate provides cost signals to residents.
7. Recycled Water Master Plan: The City Council approved the 2007 Plan to expand the City's recycled water system, and in 2008 approved the requirement that customers use recycled water for irrigation and other purposes where practical and appropriate. In permanently replacing potable water use with recycled water where feasible, the City is drought proofing a portion of our water supply, and helping to stabilize water rates.

The good news is that the actions taken by the Council have been effective and our City's residents and businesses have responded to requests to reduce water usage. We are about 10% below usage levels from last year, which is an exceptional start, but there is far more work to be done. In 2009, the Governor signed into law a requirement to reduce water consumption by 20% by the year 2020.

This past year was relatively cooler, which means that weather helped us out in terms of water demand. The real test of how much people are conserving will be when we have a hot year. When this happens, we hope demand for water does not surge, erasing gains we have made. The best way to ensure that gains are not significantly erased when the weather changes, is by the installation of durable and highly efficient devices.

Which brings us back to the point at which we started: recommending a reasonable and workable Retrofit Upon Resale Ordinance. Our goal with the Retrofit Upon Resale Ordinance is to ensure durable water savings at an advantageous time in the lifecycle of a property, namely the time of resale.

#### Retrofit Upon Resale Provides Significant Water Savings

The water savings that result from a retrofit upon resale requirement are substantial, even in a time when property sales are down. Last year, about 500 Burbank homes changed hands. Assuming that half needed to be upgraded to California Plumbing Code Standards, an estimated 7.5 million gallons of water would be saved during the first year of the Ordinance. The second year would bring an additional 7.5 million gallons of water saved from retrofitted homes plus the water saved in year two from the homes retrofitted the year prior. So, the second year's savings could be 15 million gallons. Each year, the accumulated water savings increase exponentially such that by the time five years of the proposed Ordinance had elapsed, the water saved could total over 112 million gallons.

#### Retrofit Upon Resale will Not Hamper Property Sales

Several California cities already have long-standing retrofit upon resale ordinances in place. Los Angeles, for instance, has had its ordinance since 1988, over 21 years. The experience of cities such as San Diego, San Francisco and Los Angeles shows that having an ordinance requiring efficiency upgrades of water-using devices does not limit real estate transactions.

The idea that a Seller would not elect to place their home on the market because they need to upgrade a toilet that is over 16 years old is ludicrous.

Staff is seeking to make this proposed Ordinance as easy to comply with as possible, both for Sellers as well as their real estate agents. As mentioned earlier, BWP's Green Home House Call program provides device and installation of compliant showerheads and faucet aerators at no cost to residents. For those who fall in the 'Do It Yourself' category, BWP maintains a supply of these devices that residents and local businesses can receive for free from our Conservation staff. Rebates are available for high-efficiency toilets and urinals that all property owners can take advantage of. Additionally, the proposed Ordinance includes a cap on required expenditures to achieve compliance of one tenth of one percent (0.1%) of the property's selling price.

Moreover, we have eliminated the main issue of contention for the Burbank Association of Realtors by removing the requirement to have the Seller's real estate representative sign the Certificate of Compliance form.

Last year, staff discussed with Darin Chase how best to implement the Ordinance should the Council approve it. Staff would be available to discuss the Ordinance at Burbank Association of Realtors meetings and would share the draft Certificate of Compliance with the Association as the form was being developed. Mr. Chase also discussed ways to alter the Real Estate Transfer Disclosure Statement so that the City requirement would show up on the form, mostly for the benefit of out-of-area realtors.

**SUMMARY**

Water supply reliability is an issue that concerns every single person and organization in Burbank, and as such, every person and organization needs to play a role in this issue. No group should be exempt from reasonable attempts to reduce water usage.

The proposed Retrofit Upon Resale Ordinance is simply one more practical element in a series of efforts taken to shore up Burbank's water supply. Both the BWP Board and the Sustainable Burbank Task Force fully endorse the proposed ordinance.

**RECOMMENDATION**

Staff respectfully requests that the Council adopt the proposed Retrofit Upon Resale Ordinance.

If the Council concurs, the appropriate action would be a motion to introduce the ordinance entitled "AN ORDINANCE OF THE COUNCIL OF THE CITY OF BURBANK ADDING ARTICLE 15 TO TITLE 5, CHAPTER 3 OF THE BURBANK MUNICIPAL CODE TO ESTABLISH A RETROFIT UPON RESALE PROGRAM FOR WATER EFFICIENCY IN RESIDENTIAL AND COMMERCIAL BUILDINGS."

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## **APPENDIX A**

### **Main Elements of the Proposed Retrofit Upon Resale Ordinance**

**Applicability:** The provisions of the Ordinance would apply to all residential, commercial and industrial buildings served by the City whenever the title to real property is conveyed from the seller to the buyer by means of a grant deed.

**Exceptions:** The purchase or transfer of real property between spouses, including transfers to a trustee or surviving spouse; transfers to a spouse or former spouse in the event of the death of the spouse, a property settlement agreement, legal separation or divorce; buildings that are designated historical buildings; residential bathrooms of architectural significance, including original toilets specifically color-coded to unique ceramic tile; incompatible plumbing conditions that do not allow for the installation of more efficient fixtures.

**Retrofit Measures:** Prior to entering into an agreement of sale or contracting for an exchange of any real property with residential, commercial or industrial buildings, when an escrow agreement will be executed, the Seller shall:

1. Replace all older toilets with toilets that flush with a maximum of 1.6 gallons per flush (Ultra Low Flush Toilets). Effective July 1, 2011, this requirement will change to replacing all older toilets with toilets that flush with a maximum of 1.28 gallons per flush (High Efficiency Toilets) and are listed on the Environmental Protection Agency's WaterSense™ approved toilet list.
2. Replace all older urinals with urinals that flush with a maximum of 1.0 gallons per flush. Effective July 1, 2011, this requirement will change to replacing all older urinals with high-efficiency urinals that flush with a maximum of 0.5 gallons per flush.
3. Equip all showers with showerheads having a flow rate not to exceed 2.5 gallons per minute. This requirement shall not apply to any emergency shower installed for health or safety purposes that cannot safely operate with a maximum flow rate not exceeding 2.5 gallons per minute.
4. Replace all bathroom faucet aerators with aerators having a flow rate not exceeding 2.2 gallon per minute.
5. Replace all kitchen aerators with aerators having a flow rate not exceeding 2.2 gallons per minute.

#### **Responsibilities:**

1. The Seller of the property shall be responsible for complying with the requirements of this Ordinance and certifying such by signing the "Certificate of Compliance" for the property before the close of escrow.
2. The Seller's and Buyer's real estate agent, broker or sales person involved in the transfer of property title shall give written notice to the Seller and Buyer of the requirements of this Ordinance prior to the close of escrow and transfer of property title.



3. The Seller and Buyer will certify compliance with the Ordinance by signature on the Certificate of Compliance. A signed copy of the Certificate of Compliance shall be included in the transfer documentation.
4. If the property is sold by the owner without representing agents, Seller will provide Buyer with a signed Certificate of Compliance, where Seller attests to compliance with this Ordinance to the Buyer. Both Seller and Buyer will be required to sign the Certificate of Compliance. A signed copy of the Certificate of Compliance shall be included in the transfer documentation.